

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On its Own Motion)	
Implementation of the Federal Communications)	
Commission's Triennial Review Order with respect)	03-0593
to a Batch Cut Migration Process)	
Implementation of the Federal Communications)	
Commission's Triennial Review Order with respect)	
to Potential Non-Impairment Determinations)	03-0595
Regarding Unbundled Local Switching for)	
Mass Market Customers in Specific Markets)	
Implementation of the Federal Communications)	
Commission's Triennial Review Order with respect)	03-0596
to Local Loops and Dedicated Transport)	

**RESPONSE OF MCI, AT&T AND TDS METROCOM TO
SBC'S MOTION TO DISMISS TRIENNIAL REVIEW PROCEEDINGS**

MCI, Inc. ("MCI"), AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago (collectively "AT&T") and TDS Metrocom, LLC hereby submit this brief response to SBC Illinois' June 18, 2004 Motion to Dismiss Triennial Review Proceedings ("SBC Motion").

I. SBC Illinois' Alleged Bases for Dismissal

SBC claims that dismissal of the Commission's four pending Triennial Review Order ("TRO") proceedings is warranted because the U.S. District Court for the D.C. Circuit ("D.C. Circuit") found the following Federal Communications Commission ("FCC") actions and findings unlawful: (1) the subdelegation to state commissions of the FCC's authority to conduct nine-month impairment proceedings for mass market switching, high capacity loops, and dedicated transport; (2) the FCC's national finding of impairment for mass market switching; (3) the FCC's dedicated transport rules; and (4) the FCC's subdelegation to state commissions of its

authority to conduct nine-month proceedings relating to high-capacity loops. (See SBC Motion at 2-3).

A. Subdelegation Authority

With the qualifications set forth below, MCI, AT&T and TDS Metrocom do not oppose SBC's motion to dismiss based on SBC's narrow position that the D.C. Circuit found unlawful the FCC's delegation to state commissions of its authority to make substantive determinations as to whether competing carriers would or would not be impaired if the incumbent carrier is not required to lease specific unbundled network elements.

B. D.C. Circuit's Other Findings

SBC's reasons (2) and (3) *supra* do not provide further support for dismissal, as they constitute nothing more than SBC's assertions regarding the D.C. Circuit's findings. MCI, AT&T and TDS Metrocom disagree with the D.C. Circuit's findings, but this is not the appropriate forum in which to address that disagreement.

II. Use of Information Collected in TRO

MCI, AT&T and TDS Metrocom do not oppose the SBC Motion provided that: (1) the facts compiled as a result of the ICC's *TRO* proceedings (*e.g.*, testimony and exhibits admitted into the record, and responses to data requests and subpoenas) will be made available for use in any FCC remand proceeding (should the FCC request such information), or in other proceedings dealing with impairment or UNE issues, including any proceedings at state commissions resulting from further FCC action in response to or resulting from the D.C. Circuit's decision; (2) the Protective Order entered in these dockets is revised to require all parties to preserve all information (including confidential information) provided and received in these dockets until such time as the Protective Order is further revised to provide for destruction or return of such confidential information; and (3) the dismissal is limited to the above-captioned dockets insofar

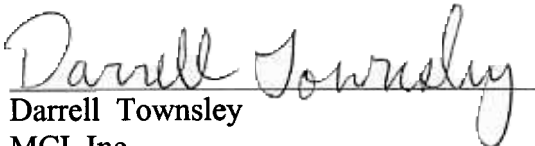
as they were established pursuant to the FCC's delegation of authority to the states pursuant to the *TRO* to make substantive impairment decisions. Such dismissal does not affect the commission's jurisdiction to act on these matters pursuant to state law or other authority.

Consequently, MCI, AT&T and TDS Metrocom request that if the Commission grants SBC's motion to dismiss, the Commission also include language in its order reflecting that the facts compiled in the *TRO* proceedings will be provided to the FCC if requested, that the Commission modify the Protective Order to require all parties to preserve all information provided or received in these proceedings until further notice and that the Commission's order provide that such dismissal does not affect the Commission's jurisdiction to act on such matters pursuant to state law or other authority.

Consistent with the foregoing qualifications and conditions, and subject to their inclusion in any orders of dismissal, MCI, AT&T and TDS Metrocom do not oppose SBC Illinois' motion to dismiss the *TRO* proceedings.

Respectfully submitted,

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